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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1965.

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CHICAGO CUTTER-KARCHER, INC.,
Petitioner,

vs.

CHARLES D. MALEY, Trustee of Lords, Inc., Bankrupt,
Respondent.

REPLY BRIEF OF PETITIONER TO RESPONDENT'S BRIEF IN OPPOSITION TO CERTIORARI.

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Respondent states, on page 2 of his brief, that Petitioner's lease, among others . . . "contains the following provisions". He then purportedly summarizes some of them by substituting in lieu of references, self-serving conclusions for non-existent language, which he could not quote.

We challenge these distortions because the lease does not "contain the following provisions":

> "b) The bankrupt was permitted to commingle the proceeds of petitioner's shoe sales with all of its other funds.
>
> c) The bankrupt had complete and unrestricted use of the proceeds of the shoe sales."

However, the Respondent accurately, but irrelevantly, states the lease provisions provided for a guaranty by the bankrupt of credit sales it approved.

There were similar provisions in the leases that were upheld as providing for a trust relationship in **In re Kline**, 7 Fed. Supp. 850,[1] affirmed (sub-nominee) in **U. S. National Bank v. Blauners Affiliated Stores, Inc.**, 75 F. (2d) 826 (1935). Also see **General Electric Co. v. Brower**, 221 Fed. 597, 601, 2 (9th Circuit 1913); **Ludvigh v. American Woolen Co.**, 231 U. S. 522, 527-9 (1913).

* * * * * * * *

> "A judicial opinion as a precedent is to be read and applied in the light of the facts of the case in which the opinion was written."[2]

Based on the above principle, the three lease agreements[3] before the U. S. Court of Appeals for the Third Circuit, in **U. S. National Bank v. Blauners Affiliated Stores, Inc.**, supra, are important to a true understanding of its holding. Their contents were summarized by the District Judge in his affirmed opinion.

However, the Respondent, **aware of their clarifying effect**, wants to rule out their consideration and argues (page 5) that:

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[1] Judge Shoonmaker in his summary of the various lease provisions stated:

> ". . .; and that so far as credit accounts were concerned, no credit was to be extended by any of these parties claimant to any person except with the approval of Kline, who guaranteed the collection of such account."

[2] **Robertson v. United States**, 249 F. (2d) 737, 743 (5th Cir.). It cites **Armour v. Wantock**, 323 U. S. 126, 133, 89 L. ed. 118, 123.

[3] They are contained on pages 18 through 37 of the Appendix to the Petition for Rehearing filed in the Court of Appeals in this case (part of the duly certified record herein).

". . . petitioner's reference to the lease involved in Blauners' is clearly improper since those documents were never made a part of the record in this case but were referred to for the first time in petitioner's petition for rehearing in banc filed with the Court of Appeals."

It is true that the leases are not part of the record in the case below in the sense of evidence but since they are referred to in the Blauners' Opinion, those leases are properly a matter of relevance to an understanding of the case.

Respectfully submitted,

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